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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Paul Zuccarello,

13 Defendant.
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No. CR-18-01367-002-PHX-SMB

ORDER

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16 The Magistrate Judge has considered Defendant's "Detention Appeal" (Doc. 85),
17 which was referred to the Magistrate Judge as a motion for reconsideration or motion to
18 reopen detention hearing, the United States' Response (Doc. 91), the file, and the transcript
19 of the detention hearing held February 11, 2020 (Doc. 91-1).

20 Pursuant to 18 U.S.C. § 3142 (f), the Court may reopen a detention hearing at any
21 time prior to trial only if:

22 the judicial officer finds that information exists that was not
23 known to the movant at the time of the hearing and that has a
24 material bearing on the issue whether there are conditions of
25 release that will reasonably assure the appearance of such
person as required and the safety of any other person and the
community.

26 "Thus, a defendant must establish two essential elements before the issue of detention may
27 be reopened: 1) that information now exists that was not known to a defendant at the time
28 of the initial hearing, and 2) the new information is material to release conditions regarding

1 flight or dangerousness.” *United States v. Bowens*, CR-07-544-2-PHX-ROS, 2007 WL
2 2220501, at *1 (D. Ariz., July 31, 2007) (citing *United States v. Hare*, 873 F.2d 796 (5th
3 Cir. 1989)).

4 In his motion, Defendant states that he “wishes to present evidence to the Court of
5 his contacts with the community,” referencing his elderly parents and his desire to care for
6 them with possible employment as their caregiver. However, the information Defendant
7 wishes to present was known to him at the time of his hearing and was, in fact, presented.
8 The Defendant proffered the following at his hearing: though unemployed for the last four
9 years, he was the owner/operator of Zuccarello Salon for five years and a hairstylist/barber
10 for twenty years with clients for whom he still cuts hair; he was employed in landscaping;
11 he is the daily caretaker of his mother who had surgery and dementia; he is 55 years old;
12 he lives with his father and pays some bills; he was married for six years and maintained a
13 relationship with his wife for an additional seventeen years; he owns two cars as reflected
14 on his financial affidavit and earned 200-800 dollars in the last twelve months on “side
15 jobs not steady” (Docs. 36, 91-1 at 4-8). The Magistrate Judge considered all information
16 proffered, as well as the Pretrial Services Report, and entire file prior to issuing an Order
17 (Doc. 39). The Magistrate Judge found probable cause that the Defendant had committed
18 an offense for which a maximum term of imprisonment of ten years or more is prescribed
19 in 21 U.S.C. § 801 et seq., 951 et seq., or 46 U.S.C. § 1901 et seq. and concluded that the
20 Defendant (i) failed to rebut the presumption that no condition or combination of conditions
21 will reasonably assure the appearance of the Defendant as required and the safety of the
22 community or any person, and (ii) was a flight risk due to his lack of resources from which
23 he might make a bond reasonably calculated to assure his future appearance; history of
24 criminal offenses, substance abuse and failure to appear. The Magistrate Judge further
25 found that the weight of the evidence in the case was great and the Defendant has ties to a
26 foreign country, specifically his cousins in Italy.

27 The Defendant has not presented new information unknown to him at the time of
28 his detention hearing. His mother has passed, and the Magistrate Judge has granted

1 compassionate temporary release for the Defendant to attend her funeral (Doc. 93). Even
2 were the Defendant to be employed as a caregiver to his father, posited by Defendant only
3 as a possibility, such a relationship does not have a material bearing on the issue of whether
4 there are conditions of release that will reasonably assure his appearance as required and
5 the safety of the community or any other person. The Magistrate Judge was well aware
6 that the Defendant was caring for his elderly mother daily and living with his elderly father
7 at the time of his arrest, providing some support to the father. The possibility of formalizing
8 that caregiving relationship with the Defendant's father does not persuade the Magistrate
9 Judge that the Defendant is not a flight risk, nor does it rebut the presumption.

10 The Defendant has not shown manifest error. The detention Order is well supported
11 by the record. Nor has the Defendant set forth in his motion new facts or legal authority
12 that was not or could not have been brought to the Court's attention earlier with reasonable
13 diligence. No basis for reconsideration exists.

14 For the reasons set forth herein,

15 **IT IS ORDERED** denying Defendant's Detention Appeal (Doc. 85), referred to the
16 Magistrate Judge as a motion to reopen detention hearing or motion for reconsideration.

17 Dated this 15th day of October, 2020.

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21 Honorable Eileen S. Willett
22 United States Magistrate Judge
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